IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRL.A.No. 177 of 2002(C)

ST.2803/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

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APPELLANT: COMPLAINANT

YOUSAFFALI S/O.MOIDEEN HAJI,PARAMEL VEEDU,VAZHIKADAVU AMSOM DESOM,NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: ACCUSED AND STATE
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1. S.ASHRAFF,S/O.MOIDEEM HAJI,SRAMBIEAL VEEDU,NARIVILAMUNDA,VAZHIKADAVU AMSOM, NILAMBUR TALUK,MALAPPURAM DISTRICT

2. STATE OF KERALA,REPRESENTED BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

R1-BY ADV. SRI.P.SAMSUDIN
R2-BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.177 OF 2002-A

Dated this the 24th day of July, 2007.

JUDGMENT

The complainant in S.T.No.2803/1998 on the file of the Judicial Magistrate of First Class, Nilambur is the appellant. As per the complaint filed before the court, it was alleged that the 1st respondent/accused had borrowed an amount of Rs.50,000/= from the appellant/complainant on 10.2.1998 on the assurance that the amount shall be repaid on demand. However, when the amount was demanded back, the 1st respondent had issued Ext.P1 cheque dated 25.3.1998. When the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. Complying the provisions regarding notice and on seeing that the amount covered by the cheque has not been repaid, the complaint has been filed before the court. To prove the case against the 1st respondent, the appellant himself was examined as PW1 and relied on Exts.P1 to P9. After closing the evidence adduced on behalf of the appellant/complainant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the transaction which led to the issuance of

Ext.P1 cheque he had stated that the cheque was not issued for any amount borrowed from the appellant, whereas the same was issued a blank cheque as security when the 1st respondent started business with the appellant. The further case of the 1st respondent was that he was having a retail grocery shop for which he used to take goods from the shop of the appellant. To prove that case, the 1st respondent himself was examined as DW1 and another witness was also examined as DW2. Exhibits D1 to D3 were also produced. It was further contended by the 1st respondent that the appellant himself has filed O.S.No.480/1998 for specific performance of an alleged agreement executed by him regarding sale of the property. However, after considering the entire evidence, the trial court found that the appellant failed to prove the case against the 1st respondent and held that the appellant had not proved that the 1st respondent had issued Ext.P1 cheque for the discharge of Rs.50,000/= alleged to have been borrowed by him on 10.2.10998. Hence, the 1st respondent was acquitted by the court below. Against which, this appeal has been filed.

2. This Court heard the learned counsel appearing on either side. It was the specific case of the appellant before the court that

he and the 1st respondent had business transactions from 1994 onwards and the 1st respondent used to purchase goods from the appellant's retail shop by payment of cash or credit and on credit sale, a balance amount of Rs.52,286/= has already been due from the 1st respondent. However, on 10.2.1998 the 1st respondent had borrowed an amount of Rs.50,000/= from the appellant. For discharge of the said amount, the cheque in question was issued by the 1st respondent. But the trial court after considering the entire evidence found that the case set up by the 1st respondent for the cheque in question was issued not for the discharge of Rs.50,000/= which alleged to have been borrowed by the 1st respondent from the appellant , whereas the same was issued as a security for the business transaction between the appellant and the 1st respondent. To come to this conclusion, the trial court found that the cheque in question contained only the signature of the 1st respondent, whereas all other writings are not that of the 1st respondent. Though this was not accepted by the appellant, there was no evidence otherwise before the court. Apart from the case set up by the 1st respondent in the court, in Ext.P7 reply, the 1st respondent had specifically stated that the cheque in question was issued during the business transaction existed between the appellant and himself.

He had further stated that the suit with regard to the agreement is also a false allegation.

However, on considering the entire evidence once again and on considering the contentions of the counsel appearing on either side, this court is of the view that the judgment of the trial court is on evidence which requires no interference. Unless and until compelling reasons are before this Court to interfere with a judgment of acquittal, this Court is not justified in interfering with any acquittal judgment even if a second view is possible on an appreciation of the evidence. In this case, no second view can also be taken on the evidence adduced. Accordingly, the judgment of the trial court is confirmed . Consequently, the appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.177 OF 2002-A

JUDGMENT

24th day of July, 2007.